Supreme Court of New Zealand

6 August 2014

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

RE GREENPEACE OF NEW ZEALAND INC
(SC 97/2012)
[2014] NZSC 105

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

Greenpeace of New Zealand Inc is an incorporated society which sought registration as a "charitable entity" under Part 2 of the Charities Act 2005. Societies or institutions qualify for registration under s 13 of the Act only if they are "established and maintained exclusively for charitable purposes".

At the time of application, the decision on registration was made by the Charities Commission. Following statutory amendment, the decision is now made by the chief executive of the Department of Internal Affairs and the Charities Board. In the absence of a contradicting party, the Charities Board appeared to assist the Court.

The Charities Commission declined Greenpeace registration on the basis that two of its objects were not charitable. The objects found to be not charitable

were the promotion of disarmament and peace and the promotion of "legislation, policies, rules, regulations and plans which further [Greenpeace's other objects] and support their enforcement or implementation through political or judicial processes as necessary". The Commission further concluded that the direct action which it found to be "central" to the activities carried on by Greenpeace could entail illegal activity which also could not be said to be in the public interest and charitable.

This appeal concerned the extent to which purposes that are "political" (including those that advocate particular views) can be charitable and the extent to which an entity which engages in illegal activities or has illegal purposes can be charitable.

Greenpeace argued that the "political purpose" exclusion, whereby the law treats objects which are "political" as non-charitable and prevents registration of an entity with such objects unless they are merely "ancillary" to charitable objects, should no longer be applied in New Zealand. The Board contended in response that the political purpose exclusion is codified by s 5(3) of the Charities Act.

Greenpeace also contended that illegal purposes or activities, if ancillary or minor, do not disqualify an entity from registration as charitable. It argued that the scheme of the Act is that only "serious offending" justifies removal from the register. Because of that scheme, it contended that purposes which are unlawful or illegal are governed by s 5(3), so that if no more than ancillary, they do not preclude charitable status. The Board argued in response that it is well-established that illegal or unlawful purposes will preclude registration as a charity.

In the High Court, Heath J considered that he was bound by Court of Appeal authority to find that the two objects of promoting peace and disarmament and advocacy through political and other forums meant that Greenpeace was not "established and maintained exclusively for charitable purposes". Although he did not need to determine the issue of illegal activity, Heath J expressed

reservations about whether there was sufficient evidence for the Commission to find that Greenpeace was deliberately involved in undertaking illegal activity.

Greenpeace appealed to the Court of Appeal. In that Court, it indicated that it had resolved to recommend to a general meeting that the two objects which had caused the difficulty be changed. The promotion of "disarmament" would be restricted to the promotion of "nuclear disarmament and the elimination of all weapons of mass destruction" (on the basis that these purposes accorded with New Zealand's international obligations and domestic law and were not controversial) and the advocacy object would be changed to make it clear that it was truly "ancillary" to Greenpeace's charitable objects.

The Court of Appeal affirmed the exclusion of political purpose, finding that it is codified by s 5(3) of the Charities Act. However, it held that the foreshadowed amendments to the Greenpeace objects avoided the exclusion. This was because it was not controversial in New Zealand that promoting nuclear disarmament and eliminating weapons of mass destruction are for public benefit and the political advocacy object was now expressed to be limited to that which was ancillary only to other charitable purposes.

The Court of Appeal considered however that the advocacy actually carried out by Greenpeace could well be beyond a level merely "ancillary" to its charitable purposes. If so, Greenpeace would not be maintained exclusively for charitable purposes. The matter had not been considered by the Commission because of the view it had taken that the expressed objects before amendment prevented registration. The Court of Appeal accordingly referred the application for registration for reconsideration by the chief executive of the Department of Internal Affairs and the Charities Board. The reconsideration was also to cover whether the direct action taken by Greenpeace entails unlawful activities that are inconsistent with charitable status.

The Supreme Court by majority (comprising Elias CJ, McGrath and Glazebrook JJ) allowed the appeal against the Court of Appeal's determination that a political purpose cannot be a charitable purpose.

The majority held that a political purpose exclusion should no longer be applied in New Zealand. They concluded that a blanket exclusion of political purposes is unnecessary and distracts from the underlying inquiry whether a purpose is of public benefit within the sense the law recognises as charitable. They rejected the conclusion of the Court of Appeal that s 5(3) of the Charities Act enacts a political purpose exclusion with an exemption if political activities are no more than "ancillary". Rather, s 5(3) provides an exemption for non-charitable activities if ancillary.

The minority (William Young and Arnold JJ) concluded that s 5(3) codifies the position that advocacy in support of a charitable purpose is non-charitable unless it is merely ancillary to that charitable purpose. They further took the view that the rule that political advocacy is not charitable is defensible not only on the basis of the authorities but also as a matter of policy and practicality and that there is accordingly no requirement to depart from the ordinary language approach to s 5(3).

The Court unanimously dismissed the appeal against the Court of Appeal's determination that purposes or activities that are illegal or unlawful preclude charitable status. The Court held that an illegal purpose is disqualifying and that illegal activity may disqualify an entity from registration when it indicates a purpose which is not charitable even though such activity would not justify removal from the register of charities under the statute.

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